LIEW AH HOCK v. MALAYAN RAILWAY

[O.C.J. (Winslow J.) August 3, 1966]

[Singapore — Suit No. 365 of 1966]

Land — Land held on temporary permit which has expired — Judgment obtained against occupier — Occupier alleging agreement to grant him a permit — Promissory estoppel.

The plaintiff claimed a declaration that he was entitled to remain in occupation of certain land and premises. The land and premises had been held by the plaintiff on temporary permit which had expired and the defendant had obtained a judgment for possession against the plaintiff. The plaintiff alleged an agreement that he would be granted a permit to occupy the land if he paid the costs of proceedings to evict other trespassers on the land.

Held: (1) as the defendant had obtained an order for possession against the plaintiff, the court could not make a declaration that the plaintiff was entitled to occupy the land;

(2) there had been no agreement as alleged by the plaintiff and even if there had been, the plaintiff had not spent money on the land so as to create an equity such that the court would protect his occupation of the land;

(3) the application of the doctrine of promissory estoppel was limited to matters of defence and it could not be relied on by the plaintiff to support his claim.

Cases referred to:—

(1) *Wright* v. *Redgrave* (1879), 11 Ch. D. 24.

(2) *Inwards & Ors.* v. *Baker* [1965] 2 W.L.R. 212.

(3) *Central London Property Trust Ltd.* v. *High Trees House Ltd.* [1947] K.B. 130.

(4) *Combe* v. *Combe* [1951] 2 K.B. 225.

CIVIL SUIT.

J. B. Jeyaretnam for the plaintiff.

P. Mooney (*J. Y. P. Chia* with him) for the defendant.

Cur. Adv. Vult.

Winslow J.: The plaintiff in this action claims —

(1) A declaration that he is entitled to remain in occupation of the land and premises situated at 354, 8½ milestone Bukit Timah Road vested in the defendant.

(2) An injunction to restrain the defendant by itself, its servants or agents from proceeding with the execution of the judgment against the plaintiff obtained by the defendant in Civil Suit No. 1759 of 1960 or otherwise obstructing or interfering with the plaintiff's enjoyment of the said land.

(3) An order that the defendant do comply with the terms of the agreement reached between the plaintiff and the defendant in or about 1960.

It is admitted by the defence that the plaintiff was, in fact, in occupation of the land in question under a temporary permit from 1953 to 1960 and that he has continued to occupy it thereafter albeit without a permit. The plaintiff claims that the defendant agreed in 1960 to grant the plaintiff a temporary permit if he would pay the costs of proceedings to be brought in the defendant's name to evict other occupiers of the land and contends that he has paid such costs but that the defendant refuses to evict one of the occupiers of the land and also refuses to renew the permit as promised.

The defendant denies these allegations and contends that it obtained judgment against the plaintiff and others in Civil Suit No. 1759 of 1960 in the High Court by virtue of which it is entitled to recover possession of the land in question and that, in execution of that judgment, it has issued a writ of possession against both the plaintiff and the other occupier mentioned above. The present claim has been brought to prevent such execution.

Before I proceed to analyse the evidence adduced in this case, it may be useful, at this stage, to deal with the submission which was made by Mr. Mooney, counsel for the defendant, in connection with the contention set out above. He submitted that the present action was not maintainable in law on the ground that there is no precedent for asking a court to grant an injunction against the execution of its own judgment especially in the circumstances prevailing since the fusion of law and equity in 1878. Reliance was placed on the decision in *Wright* v. *Redgrave* [1] in which it was held that on the principle that there should never be conflicting proceedings going on at the same time in two branches of the court an injunction to restrain proceedings in one branch would be refused on an action being brought in another.

There is already a valid subsisting judgment in favour of the defendant for possession against the plaintiff of the land in question. That was a judgment of the High Court in Civil Suit No. 1759 of 1960 and, in execution of that judgment, the defendant has issued a writ of possession against the plaintiff. I am being asked, in effect, to grant an injunction to restrain such execution in the current action.

I am of the opinion that I would no more be justified in entertaining such an application than Malins V.C. was in *Wright* v. *Redgrave* above where his grant of such an injunction was reversed by the Court of Appeal for the reason I have already stated.

Be that as it may, it is clear from the facts that —

(*a*) the plaintiff is a trespasser on the land in question comprising an area of 25,775 square feet whose permit expired at the end of 1959 and whose occupation thereof has since been tolerated by the defendant;

(*b*) as far back as 15th May, 1957 it was made clear to his solicitors (Exhibit AB5) that the plaintiff was only entitled to use a maximum area of 1830 square feet of such land for the erection of dwelling houses under the terms of

the permit and that he had been sub-letting the land without the consent of the defendant;

(*c*) he was, in fact, then occupying a total area of some 3,900 square feet and that he had been collecting rent from squatters whom he himself allowed to come on to the land;

(*d*) on 27th February, 1958 his solicitors, Messrs. Allen & Gledhill, wrote to the defendant (Exhibit AB11) stating that, unfortunately, the plaintiff was unable to succeed in eviction proceedings brought by him against the squatters as he himself admitted that in previous proceedings, he had claimed that the huts occupied by these squatters were erected during the Japanese occupation. The premises were, therefore, rent controlled and he was unable to evict them. In this letter his solicitors made the following suggestion to the defendant:—

"In view of what has happened we would suggest that it will be just as easy for the Railway Authorities to determine the licence of our client and thereby evict not only our client but all other persons who are in occupation thereof. Our client will be prepared to give you whatever assistance you may require in doing this and also if necessary to defray your expenses;"

(*e*) on 31st March, 1959 his solicitors wrote again to the defendant explaining that the plaintiff had, through ignorance of the law, brought into existence a tenancy in favour of the other occupiers of the land which he was estopped from denying and accordingly his solicitors suggested to the defendant that the safest course to adopt would be for the defendant to take action to evict the plaintiff as well as the other occupiers. They went on to add significantly — "After this if you so feel justified you can then grant a fresh tenancy to our client on new terms should you deem that also necessary" (Exhibit AB16);

(*f*) on 5th December, 1959 Mr. Fleeton, the defendant's general manager, called at the office of Messrs. Allen & Gledhill and saw Mr. Karthigesu of that firm and an attendance note of what occurred at this meeting is contained in exhibit AB19. According to this note Mr. Fleeton informed Mr. Karthigesu that he was prepared to accept his proposals to assist in the clearing of the site, that costs of legal proceedings would be borne by the plaintiff, that once the land was cleared of occupiers including the plaintiff himself the defendant would enter into an agreement that a licence, renewable every year for a period of 5 years, would be granted but that it would be a condition of renewal that the plaintiff would have to maintain the area licensed free of squatters;

(*g*) on 5th January, 1960, at exhibit AB24 Mr. Fleeton wrote to the plaintiff's solicitors as follows:—

"The first of such licences will not be granted to your client unless and until all the other occupiers have been evicted at your client's cost, and your client has reduced the area of the buildings on the site to 1,830 sq. ft. as prescribed in his original permit. Neither will the proposed agreement be entered into by this administration until these preliminary steps have been taken;"

(*h*) in due course the Federal Lands Commissioner in Kuala Lumpur, in whom the land is vested, gave his consent to the commencement of proceedings for possession against the plaintiff and the other unauthorised occupiers, and Mr. Karthigesu was instructed to act on the defendant's behalf in such proceedings (Exhibit AB29). On 2nd November, 1961 judgment was entered against the plaintiff cancelling his permit for temporary occupation of the said land and declaring that his rights thereunder had been determined. It was also declared that the remaining 8 squatters were trespassers who were not entitled to remain on the said land. There was also an order for possession in favour of the defendant. In due course all the squatters, except the plaintiff and one other person, Mrs. Devakaran, were evicted and their huts demolished;

(*i*) on 15th May, 1963 Mr. Karthigesu wrote to the sheriff on behalf of the defendant about putting the plaintiff into possession of the land in accordance with the judgment. In this letter he said that as a result of certain negotiations "our client" (meaning the defendant) "had agreed to consider" re-issuing a permit to the plaintiff in this case. They accordingly asked the sheriff not to execute the writ of possession against the plaintiff provided his area of residential occupation was confined to 1,830 square feet. He went on to add —

"If subsequently our clients do not issue Liew Ah Hock with a permit we will apply to you under the same writ to evict the 1st defendant."

It should be observed that Mr. Karthigesu was acting for both the plaintiff and the defendant at that time;

(*j*) the defendant subsequently decided to allow Mrs. Devakaran "to remain on the site where she is at present" (Exhibit AB34). On this site stands a dwelling house No. 358 Bukit Timah Road occupied by her. The house was erected by the plaintiff who said that he would have no objection to her remaining there provided that his permit to occupy the said land for the cultivation of vegetables and the erection of dwelling huts confined to an area of 1,830 square feet was renewed. He insisted, however, that the area of 1,830 square feet to which the restriction would apply should exclude the site occupied by Mrs. Devakaran and that the plaintiff should be compensated for the dwelling house occupied by her (Exhibit AB44). The defendant accordingly asked Mrs. Devakaran to settle the matter of compensation with the plaintiff or his solicitors (Exhibit AB46). Unfortunately the

plaintiff and Mrs. Devakaran were unable to agree upon the compensation payable;

(*k*) on 11th May, 1964 the defendant wrote to the plaintiff's solicitors complaining that the plaintiff was still occupying an area of 3,655 square feet and asked that he should take steps to reduce this area to 1,830 square feet before a permit could be issued (Exhibit AB59). Difficulties and misunderstandings continued to prevail between the plaintiff and Mrs. Devakaran until 13th July, 1964 when the defendant wrote to the plaintiff's solicitors stating that if the matter was not settled amicably the defendant would not give any consideration to granting permits to either of them (Exhibit AB63). These difficulties were never resolved and in desperation the defendant, after protracted correspondence which produced no useful result, decided to institute proceedings for eviction against both the plaintiff and Mrs. Devakaran and on 17th November, 1965 took out a writ of possession herein for their eviction (Exhibit AB72);

(*l*) the plaintiff did not make any satisfactory effort to comply with the request that he should confine his area of residential occupation to 1,830 square feet until just before the trial began. When a surveyor, Mr. Wong Seck Pung (P.W.2) made a survey of the houses occupied by the plaintiff and his family a few days before the trial he found that the area occupied by such houses was exactly 1,830 square feet, a situation which was described by counsel for the defendant as highly dubious. At the least it is a most remarkable coincidence.

I am asked to hold, in all the circumstances, that the defendant made a promise from which it cannot resile, that promise being that it would grant the plaintiff a temporary occupation permit on the fulfiiment of the following prerequisites *viz.* (1) that he would pay the costs and expenses incurred by the defendant in proceedings for possession of the said land, (2) that all squatters would be evicted and (3) that the plaintiff would reduce the area of land occupied by him for residential purposes to 1,830 square feet.

Counsel for the plaintiff, Mr. Jeyaretnam, whose firm commenced acting for the plaintiff in place of Messrs. Allen & Gledhill just before the issue of the writ of possession in Civil Suit No. 1759 of 1960, contends that the plaintiff has complied with all these requirements and has expended money on the land in reliance upon the promise given by the defendant and that, therefore, there is a binding agreement to which the defendant should give effect by issuing a permit to the plaintiff.

On the evidence before me I am unable to find such a binding agreement as between the parties. As Mr. Karthigesu said in evidence, the talk which he had with Mr. Fleeton in December, 1959 was merely exploratory and his impression was that if the occupiers were ejected and expenses borne by the plaintiff the defendant would be favourably inclined to renew the plaintiff's permit for a further 5 years. From the tone of his subsequent correspondence it seems to me that at no time did Mr. Karthigesu himself regard the matter as being one which was not entirely within the discretion of the defendant and that he was aware that consideration would be given to the grant of a permit after compliance with the conditions imposed by the defendant if the latter so felt justified. Any expenditure of money on his part was, as Mr. Mconey submitted, merely towards rectifying his own misdemeanours in allowing unauthorised persons to occupy the land from whom he had, on his own admission, collected more than $2,000 in rent (Exhibit AB9 and AB10). The fee he paid the defendant was only $21.30 per annum!

Mr. Karthigesu, as the plaintiff's legal adviser, was the person who made the proposals in the first place but subsequently he became solicitor for the defendant as well in the proceedings for possession and, as I have pointed out earlier, wrote to the sheriff at exhibit AB42 stating that as a result of certain negotiations the defendant had agreed to consider the grant of a permit to the plaintiff. I do not think that Mr. Karthigesu would have addressed the sheriff in these terms if he had formed the view that a binding agreement had been concluded between the plaintiff and the defendant and I am not prepared to hold that there was such an agreement.

Even if there was a concluded agreement I do not think that that alone would be sufficient to dispose of this case. Mr. Jeyaretnam sought to invoke the principle laid down in *Inwards* v. *Baker* [2] that where a person has expended money on the land of another in the expectation, induced or encouraged by the owner of the land, that he would be allowed to remain in occupation, an equity was created such that the court would protect his occupation of the land. In my opinion, there was no expenditure of money on the land in the present case which is at all comparable with the expenditure of money in projects such as the building of a house as was the case in *Inwards* v. *Baker, supra,* and it is clear from the authorities preceding that case that money laid out on the land or expended on the land of another means money directed towards physical or structural improvements to the land such as the erection of houses, wharves and jetties, etc. The expenses which the plaintiff incurred herein were the costs and expenses of the defendant in Civil Suit No. 1759 of 1960. He made no physical improvement to the land by paying such costs and expenses and was

merely helping to evict occupiers whom he had himself brought on to the land in breach of the conditions of his occupation and whom he could only evict by pretending to be evicted himself.

It was furthermore contended that there was a promissory estoppel operating against the defendant.

Mr. Jeyaretnam relied on the principle formulated by Denning J., as he then was, in *Central London Property Trust Ltd.* v. *High Trees House Ltd.*[3] where he held that the plaintiff company had made a promise that was "intended to create legal relations, was to the knowledge of the promisor, to be acted upon by the promisee, and was in fact so acted upon by the promisee", and that the plaintiff company was accordingly bound to honour its promise.

Applying this principle to the facts in the present case it seems to me that unless there was a promise by the defendant this principle cannot help the plaintiff at all. I have already held that there was no such promise. Assuming, however, that there was a promise by the defendant that it would grant a permit on compliance with the conditions to which reference has already been made and assuming that the plaintiff acted upon this promise and duly complied with the conditions imposed, I am of the opinion that the plaintiff cannot succeed. As *Spencer Bower and Turner* state in their 2nd Edition of the Law Relating to Estoppel by Representation at page 339, there are limitations or modifications which should be imposed upon the doctrine enunciated by Denning J. in the *High Trees'* case, *supra*. Six such limitations or modifications are examined in detail in this work and I need only refer to two such limitations or modifications.

First, the authors consider whether the doctrine can be used to support a claim or whether its application is limited to matters of defence. They reach the conclusion that the doctrine may afford a defence against the enforcement or otherwise of enforceable rights: it cannot create a cause of action.

Asquith L.J. in *Combe* v. *Combe* [4] said —

"What that case decides (meaning the *High Trees'* case) is that when a promise is given which (1) is intended to create legal relations, (2) is intended to be acted upon by the promisee, and (3) is in fact so acted upon, the promisor cannot bring an action against the promisee which involves the repudiation of his promise or is inconsistent with it. It does not, as I read it, decide that a promisee can sue on the promise. On the contrary, Denning J., expressly stated the contrary."

Next, the authors discuss a further proposition, to wit, that he who raises an equitable estoppel must do equity himself: otherwise equity will not assist him. In the present case it has taken 5 years at least for the plaintiff (and probably only after a writ of possession had been taken out to evict him) to make an attempt to comply with one of the essential conditions *viz.* that he should reduce the area of his residential occupation to 1,830 square feet. In other words, if there was a promise to give him a permit that promise was in turn dependent on the performance of another mutual promise in respect of which the promisee has not performed his part of the undertaking within a reasonable time or conducted himself in such a manner as to require the assistance of equity.

It would seem, therefore, that, on any view of the case, the plaintiff cannot succeed.

The plaintiff's claim is accordingly dismissed with costs.

Claim dismissed.

Solicitors: *Donaldson & Burkinshaw; J. Y. P. Chia & Co.*

WONG SIENG PING v. PUBLIC PROSECUTOR

[A.Cr.J. (Lee Hun Hoe J.) August 9, 1966]

[Sibu — Criminal Appeal No. 6 of 1966]

Criminal Law and Procedure — Trial — Evidence — Burden of proof — Whether burden shifts in a criminal trial.

This was an appeal against the conviction of the appellant for the offence of cheating. On appeal it was argued *inter alia* that the learned magistrate had erred in law concerning the burden of proof and the quantum or degree of proof. In his judgment the learned magistrate said: "An irregularity may be explained with plausibility but too many irregularities require convincing explanations. The burden of proof has shifted on him and he chose to discharge it by producing a document that clearly shows on it that it had been tampered with well in advance so as to falsify what was originally a genuine receipt. I am satisfied beyond reasonable doubt that the accused failed to establish a case which at least would raise doubt as to his guilt and entitle him to an acquittal". Later in his judgment he said "still it may be said that the prosecution here has not proved the case beyond reasonable doubt or in another language by preponderance of evidence".

Held: (1) the onus of proof of guilt always rests on the prosecution and never shifts to the accused. The onus never shifts to the accused to "give an explanation" or "to establish a case" as this would be inconsistent with the presumption of innocence;

(2) the burden on the prosecution in a criminal case is to prove the case beyond reasonable doubt and not on the preponderance of evidence only;

(3) in this case the magistrate had erred in law and therefore the appeal must be allowed.

Case referred to:—

(1) *Woolmington* v. *Director of Public Prosecutions* [1939] A.C. 462.

CRIMINAL APPEAL.

J. V. Nayar for the appellant.

C. J. Millar (Deputy Public Prosecutor) for the respondent.